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7

8 BEFORE THE ARIZONA MEDICAL BOARD

9 In the Matter of:

10 **KEVEN DEAN BROCKBANK, M.D.**

11 Holder of License No. 29044
12 For the Practice Medicine
In the State of Arizona,
13

Case No. MD-04-1131

Case No. MD- 04-1038

**CONSENT AGREEMENT FOR
SURRENDER OF ACTIVE LICENSE**

14 **CONSENT AGREEMENT**

15 **RECITALS**

16 In the interest of a prompt and judicious settlement of the above-captioned matter before
17 the Arizona Medical Board ("Board") and consistent with the public interest, statutory
18 requirements and responsibilities of the Board and pursuant to A.R.S. § 41-1092.07(F)(5) and
19 A.R.S. § 32-1401 *et seq.*, Keven D. Brockbank, M.D. holder of license number 29044 to
20 practice allopathic medicine in the State of Arizona ("Respondent") and the Board enter into the
21 following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as
22 the final disposition of this matter.

23 1. Respondent acknowledges that he has read and understands everything contained
24 in the Consent Agreement and has had the opportunity to discuss this Consent Agreement with
25 an attorney and has done so or chooses not to do so. Respondent admits to all Findings of Fact
26 contained in the Consent Agreement. Respondent voluntarily enters into this Consent Agreement
for the purpose of avoiding the expense and uncertainty of an administrative hearing.

1 2. Respondent understands that he has a right to a public administrative hearing
2 concerning each allegation set forth in the above-captioned matter, at which administrative
3 hearing he could present evidence and cross-examine witnesses. By entering into this Consent
4 Agreement, Respondent freely and voluntarily relinquishes all rights to such a administrative
5 hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any
6 other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent understands that by entering into this Consent Agreement,
8 Respondent voluntarily relinquishes any rights to challenge in state or federal court this Consent
9 Agreement in its entirety or any portion thereof as issued by the Board and waives any other
10 cause of action related thereto or arising from the Consent Agreement.

11 4. Respondent acknowledges and understands that this Consent Agreement will not
12 become effective until approved by the Board and signed by the Board's Executive Director or
13 designee.

14 5. All admissions made by Respondent in regards to these matters are solely for final
15 disposition of these matters and any subsequently related administrative proceedings or civil
16 litigation involving the Board and Respondent. Therefore, admissions by Respondent are not
17 intended or made for any other use, such as in the context of another state or federal regulatory
18 agency proceeding, civil or criminal proceeding, in the State of Arizona or any other state or
19 federal court.

20 6. Respondent understands this Consent Agreement deals with Board Investigations
21 Case No. MD-04-1131 and Case No. MD- 04-1038 involving allegations of unprofessional
22 conduct against Respondent. The investigation into these allegations against Respondent shall be
23 concluded upon the Board's adoption of this Consent Agreement.

24 7. Respondent understands that this Consent Agreement does not constitute a
25 dismissal or resolution of other matters currently pending before the Board, if any, and does not
26 constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction

1 regarding any other pending or future investigation, action or proceeding. Respondent also
2 understands that acceptance of this Consent Agreement does not preclude any other agency,
3 subdivision or officer of this state from instituting any other civil or criminal proceedings with
4 respect to the conduct that is the subject of this Consent Agreement.

5 8. Respondent acknowledges and agrees that, upon signing this agreement and
6 returning this document to the Board's Executive Director, Respondent may not revoke his
7 acceptance of the Consent Agreement or make any modifications to the document, regardless of
8 whether the Consent Agreement has been issued by the Executive Director. Any modifications
9 to this original document are ineffective and void unless mutually approved by the parties.

10 9. Respondent further understands that this Consent Agreement, once approved and
11 signed by all parties, shall constitute a public record of disciplinary action against his license to
12 practice medicine, which may be publicly disseminated as a formal action of the Board, and shall
13 be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity
14 and Protection Data Bank

15 10. Respondent understands that any violation of this Consent Agreement constitutes
16 unprofessional conduct under A.R.S. § 32-1401(27)(r)([v]iolating a formal order, probation,
17 consent agreement or stipulation issued or entered into by the board or its executive director
18 under the provisions of this chapter) and shall result in disciplinary action under A.R.S. § 32-
19 1451 *et seq.*

20 11. If any part of the Consent Agreement is later declared void or otherwise
21 unenforceable, the remainder of the Order in its entirety shall remain in full force and effect.

22 12. The parties mutually understand and agree that this order constitutes a final,
23 binding decision of this matter under investigation by the Board and referenced above.

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1 Reviewed and Accepted this 18 day of Oct, 2004 by:

2 

3 Keven D. Brockbank, M.D.
4 Respondent

5 Reviewed and Approved as to Form this 18 day of Oct, 2004 by:

6
7 (Signature) Counsel for Respondent (if any)

8
9 (Print Name)
10 Counsel for Respondent (if any)

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of the
13 practice of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of license number 29044 for the practice of allopathic
15 medicine in the State of Arizona.

16 **Investigation MD-04-1131**

17 **Patient J.S.**

18 3. On or about September 7, 2004, the Board received a complaint from
19 female patient ("J.S.") stating that Respondent prescribed and administered prescription-only
20 medication, including narcotics, without first conducting a physical examination of J.S. In
21 response, the Board initiated an investigation and assigned case number MD-04-1131 which
22 established the facts and circumstances as described herein.

23 4. On or about October 22, 2003, J.S. presented to Respondent at his office as
24 a patient who suffers from chronic pain attributable to her migraine headaches and multiple
25 sclerosis. Although Respondent prescribed narcotic pain medication for J.S., he did not give her
26 a physical examination, take a patient history, weigh the patient or conduct blood or urine tests,

1 as the standard of care requires.

2 5. J.S. appeared at Respondent's office for additional pain management treatment
3 for approximately five (5) additional visits in late 2003.

4 6. J.S. appeared at Respondent's office for additional pain management treatment
5 for approximately four (4) additional visits during the first half of 2004.

6 7. Respondent made "house calls" to J.S.'s residence approximately eighteen (18)
7 times in late 2003 and the first eight (8) months of 2004. Most, if not all of these "house calls"
8 were for the stated purpose of treating J.S.'s debilitating headaches with injections of pain
9 medications (narcotics).

10 8. J.S. stated that during these house calls, Respondent massaged her and made
11 inappropriate sexual advances, including inappropriate touching of J.S. Respondent also made
12 inappropriate sexual comments to J.S.

13 9. The standard of care requires that in order for a physician to prescribe medication,
14 the physician must obtain and record a detailed patient and family history and perform a
15 minimum physical examination consisting of recording blood pressure, weight, allergies, and a
16 urinalysis. Also, a patient needs to be informed of the risks and benefits of taking the
17 medication.

18 10. Respondent fell below the standard of care in that prior to prescribing medication
19 (narcotics) to J.S., he did **not** obtain and record a detailed patient and family history and perform
20 a minimum physical examination consisting of recording blood pressure, weight, allergies, and a
21 urinalysis. Further, Respondent did not inform J.S. of the risks and benefits of taking the
22 medication.

23 11. The standard of care requires that a physician shall not make sexual advances
24 or comments of a sexual nature to his patient.

25 12. Respondent fell below the standard of care when he made sexual advances and
26 comments of a sexual nature to his patient, J.S.

1 **Investigation MD-04-1038**

2 **Patient B.P.**

3 13. On or about August 17, 2004, the Board received a facsimile from the Community
4 Counseling Center, Show Low, Arizona ("Community Counseling Center") stating that
5 Respondent engaged in inappropriate sexual conduct with a current female patient ("B.P."). In
6 response, the Board initiated an investigation and assigned case number MD-04-1038 which
7 established the facts and circumstances as described herein.

8 14. On or about June 15, 2004, Respondent began treating B.P. for pain associated
9 with the conditions of fibromyalgia, arthritis and possible degenerative spine disease. During
10 this visit, Respondent ordered an MRI of B.P.'s spinal area. Respondent also prescribed Percocet
11 to manage B.P.'s pain. Although Respondent prescribed narcotic pain medication for J.S., he did
12 not give her a physical examination, take a patient history, weigh the patient or conduct blood or
13 urine tests, as the standard of care requires.

14 15. On or about July 7, 2004, B.P. returned to Respondent's office and told
15 Respondent that the dosage of a particular pain medication, MS Contin, was not strong enough.
16 Respondent prescribed for B.P. at least two (2) additional narcotics for pain management,
17 Methadone and Percocet.

18 16. On or about July 23, 2004, B.P. returned to Respondent's office and requested an
19 increase in the dosage of her medication. During this office visit, Respondent told B.P. that if
20 the oral dosages were not effectively managing her pain, he could provide her with an injection.
21 Respondent asked B.P. if she had a ride home from this office visit. B.P. responded that she
22 would be driving herself. Respondent stated that he could not give her an injection of pain
23 medication unless she had a ride home. Respondent then offered to drive to B.P.'s home after he
24 finished his work, and provide her with an injection there. B.P. agreed.

25 17. On or about July 23, 2004 at approximately 12:30 p.m., after Respondent had left
26 his office, he arrived at B.P.'s residence in Lakeside, Arizona. During this visit, Respondent
injected B.P. with a narcotic and touched B.P. in an inappropriate and sexual manner.

1 Respondent also offered his cell phone number to B.P. and encouraged her to telephone him.
2 Respondent did not record the July 23, 2004 visit to B.P.'s home in her medical chart, although
3 Respondent states that he habitually records in his charts all patient visits.

4 18. On or about July 25, 2004, Respondent telephoned B.P. at her home. Respondent
5 asked her how she was doing and offered to come to her residence to provide her with another
6 injection. B.P. declined the offer.

7 19. On or about July 26, 2004, B.P. filed a complaint with the Navajo County
8 Sheriff's Office alleging that Respondent sexually assaulted her at her residence on July 23,
9 2004.

10 20. On or about July 27, 2004, B.P. met with Detective Seivers, Show Low Police
11 Department, to report her allegations.

12 21. On or about August 3, 2004, B.P. called Respondent's office and spoke to
13 Respondent's nurse. According to the nurse, B.P. was very upset and requested to cancel her
14 appointment which was scheduled for August 4, 2004. B.P. indicated to the nurse that she would
15 be unable to make the appointment because she had a "family emergency." B.P. did not
16 elaborate as to the nature of this "family emergency." Interestingly, the nurse's notes state that
17 B.P. did visit her primary care physician at this time and received a prescription for Methadone
18 from him.

19 22. On or about August 20, 2004 and September 10, 2004, Board staff interviewed
20 Respondent. Respondent admitted that he may have rubbed B.P.'s neck and shoulders when he
21 administered the pain medication but denied any inappropriate behavior.

22 23. The standard of care requires that in order for a physician to prescribe medication,
23 the physician must obtain and record a detailed patient and family history and perform a
24 minimum physical examination consisting of recording blood pressure, weight, allergies, and a
25 urinalysis. Also, a patient needs to be informed of the risks and benefits of taking the
26 medication.

10. Respondent fell below the standard of care in that prior to prescribing medication

1 (narcotics) to B.P., he did not obtain and record a detailed patient and family history and perform
2 a minimum physical examination consisting of recording blood pressure, weight, allergies, and a
3 urinalysis. Further, Respondent did not inform B.P. of the risks and benefits of taking the
4 medication.

5 11. The standard of care requires that a physician shall not make sexual advances
6 or comments of a sexual nature to his patient.

7 12. Respondent fell below the standard of care when he made sexual advances and
8 comments of a sexual nature to his patient, B.P.

9 10 **CONCLUSIONS OF LAW**

11 1. The Board possesses jurisdiction over the subject matter and over Respondent.

12 2. The conduct and circumstances described in the Findings of Fact above, constitute
13 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) (“[a]ny conduct or practice that is
14 or might be harmful or dangerous to the health of the patient or the public”).

15 3. The conduct and circumstances described in the Findings of Fact above, constitute
16 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(z)(ii) (“[m]aking sexual advances,
17 requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual
18 nature.”)

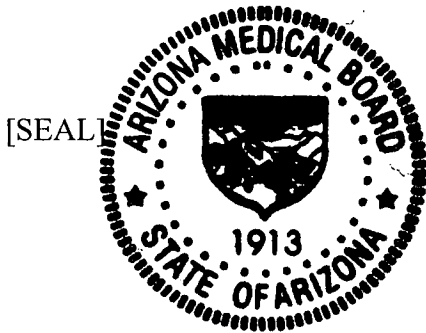
19 20 **ORDER**

21 Based on the above Findings of Fact and Conclusions of Law and under the authority
22 granted to the Board by A.R.S. § 41-1092.07(F)(5) and A.R.S. § 32-1451(T)(2) and (3):

23 IT IS HEREBY ORDERED, that license number 29044, issued to Keven D. Brockbank,
24 M.D. for the practice of allopathic medicine in the State of Arizona, is surrendered and that he
25 shall immediately return his license to the Board as a result of his unprofessional conduct, in
26 regard to patients J.S. and B.P., including the following: (i) Failing to obtain and record a
detailed patient and family history and perform a minimum physical examination consisting of

1 recording blood pressure, weight, allergies, and a urinalysis prior to prescribing medications
2 (narcotics) and failing to inform his patients of the risks and benefits of taking the medication;
3 and (ii) Making sexual advances and comments of a sexual nature.

4
5 DATED AND EFFECTIVE this 10th day of November, 2004.



ARIZONA MEDICAL BOARD

9
10 By: Barry Cassidy
BARRY A. CASSIDY, Ph.D., P.A. -C
Executive Director

11
12
13 **Original** of the foregoing filed this
10th day of November, 2004, with:

14 Board Operations
15 Arizona Board of Medical Examiners
16 9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

17 **Copy** of the foregoing
18 mailed by U.S. Certified Mail
this 10th day of November, 2004, to:

19 Keven D. Brockbank, M.D.
20 5448 Highway 260, Suite 230
Lakeside, Arizona 85929-5732
Respondent

21
22 **Copy** of the foregoing mailed
this 10th day of November, 2004, to:

23 Ann-Marie Anderson
24 Assistant Attorney General
25 Attorney General's Office
1275 West Washington Avenue, CIV/LES
26 Phoenix, Arizona 85007
Attorneys for the State

doc#430453